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★ JUL 23 2013 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
AMAURY ROSARIO,

Petitioner,

- against -

UNITED STATES OF AMERICA

Respondent.
-----X

ORDER TO SHOW CAUSE

13-CV-3565 (ARR)

12-CV-3432 (ARR)

Relates to:

99-CR-533 (ARR)

ROSS, UNITED STATES DISTRICT JUDGE:

The Second Circuit has issued an order denying petitioner's request to bring a successive petition for a writ of habeas corpus in 13-CV-3565, but granting permission to bring a successive petition in 12-CV-3432. Both petitions, filed pursuant to 28 U.S.C. § 2255, raise the same issue: whether petitioner's sentence should be vacated in light of Miller v. Alabama, 132 S. Ct. 2455 (2012). The Second Circuit has directed this court to address whether Miller applies retroactively to petitioner's case. Accordingly, it is hereby ORDERED that:

(1) The United States Attorney for the Eastern District of New York, as attorney for respondent, is requested to show cause before this court, by the filing of a return to the petition, why said motion pursuant to 28 U.S.C. § 2255 should not be granted, and to respond to petitioner's argument that Miller applies retroactively;

(2) Within ten (10) days of receipt of this order, the United States Attorney for the Eastern District of New York shall serve a copy of her return upon the petitioner herein and file the original thereof with proof of such service with the Clerk of this Court;

(3) Petitioner within five (5) days of receipt of a copy of the return of the United States Attorney, shall file a reply, if any, with the Clerk of this Court;

(4) Petitioner's counsel in 13-CV-3565 shall make an appearance in 12-CV-3432 and supplement the petition in that case with his memorandum of law;

(5) The Clerk of Court is directed to close 13-CV-3565 and to serve a copy of this order by forwarding a copy thereof, together with a copy of the petition, to the United States Attorney for the Eastern District of New York and by mailing a copy of this order to the petitioner and petitioner's counsel.

SO ORDERED:

Dated: Brooklyn, New York
July 23, 2013

/S/ Judge Allyne R. Ross

Allyne R. Ross
United States District Judge

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